

Date of decision: 22-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(22-7-1996)

Mr. A. N. Raval for M. R. Anand for the petitioners
Mr. N. N. Pandya for respondents

ORAL JUDGMENT:

Challenge is made by the petitioners in this special civil application to annexures-A and C. It is not in

dispute that final seniority list of senior clerks has been published by the respondents. Annexure- C is the provisional seniority list of the cadre of senior clerks published by the respondents. It is not in dispute that in the provisional seniority list dated 18-2-1980 the position of the petitioners still remained as it was in the earlier final seniority list dated 23-9-1976. In the seniority list dated 18-2-1980 only subsequent changes have been brought in. The grievance of the petitioners is that promotees have been wrongly given deemed date of promotion which has resulted in their coming above the petitioners in the final seniority list. Because of this higher assignment of seniority to the promotees the chances of future promotion of the petitioners would be prejudiced. It is not in dispute that the petitioners and the so-called promotees have already been promoted to higher posts. In the provisional seniority list of 18-2-1980 the position remains the same.

2. Final seniority list was published on 23-9-1976 and the petitioners have not challenged the said list at any point of time either before the Gujarat Civil Services Tribunal or before this Court earlier to filing of this Sp.C.A. Though the petitioners made representation against the final seniority list, but not approached this court within reasonable time. It would be unfair to the persons whose names are shown above the petitioners in the seniority list to entertain this petition at this stage and unsettle the settled position. Even when the representation filed by the petitioners has been decided against them on 13th May, 1980, this special civil application is filed on 10th August, 1982, that is after more than two years. The delay in filing the special civil application, from the date of publication of final seniority list or even from the date of rejection of representation, is unreasonable. No explanation for the delay comes forth from the petitioners.

3. It is true that normally after admission of the writ petition this Court would not be inclined to reject the petition on the ground of delay. But this rule cannot be applied in all the cases. In the matter of seniority delay on the part of petitioners to approach this court would affect the rights of other persons whose positions have been settled and crystallized. It is not in dispute that the promotees have already been promoted to the next higher post on the basis of their seniority which was assigned to them in the final seniority list of the year 1976. If in the 1980 seniority list nothing has been done except bringing in the subsequent changes, it is difficult to say that it will give fresh cause of action to the petitioners. After years of publication of the final seniority list the settled

position should not be unsettled. Be that as it may.

4. Yet there is another ground which disentitles the petitioners from seeking any relief from this court under Article 226 of the Constitution of India. The petitioners challenge their placement in the seniority list and claim that the promotees have wrongly been assigned seniority above the petitioners. In case the prayer made by the petitioners is allowed, then this Court will be giving them higher seniority in the cadre of senior clerks than the promotees who are not before this Court. In the matter of seniority where claim is for higher position therein, the persons who have already been shown senior to the petitioners in the final seniority list are necessary parties to the petition. In case the relief of the nature as prayed for is granted in absence of the persons who have been admittedly shown senior to the petitioner in the final seniority list it will cause prejudice to them. This court will not perpetuate illegality and pass order against the principles of natural justice. The contention of the learned counsel for the petitioners is that they are entitled to the relief prayed for in this writ petition as the Tribunal has already held that deemed date of promotion to the promotees would not be given. This contention can not be accepted in this special civil application as the person over whom the petitioners seek seniority are not before this court. From the prayer made in paras 16(B) and (C) it is clear that the petitioners are claiming higher position in the final seniority list annexure-A as well as in the provisional seniority list annexure-C which cannot be granted in absence of necessary parties. This writ petition suffers from the vice of nonjoinder of necessary parties.

5. In the result the special civil application fails and same is dismissed. Rule discharged. Interim relief granted earlier by this court stands vacated.

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